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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,535	01/06/2004	Van Miller	Low Glycemic Index Baking	3319
7590	08/05/2005		EXAMINER	
Mr. Van Miller P. O. Box 100 Norval, ON L0P 1A0 CANADA			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/751,535

Applicant(s)

MILLER, VAN

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Line 5, the phrase " an mixtures and combinations thereof" is unclear because it is not clear what is intended by it. Mixtures thereof and combinations thereof mean the same thing; thus, it is known what is meant by the use of both or are the combinations thereof referring to different thing. Line 8 has the same problem as line 5. In claim 6, the words " glycmic, ingredi nt and bicarbonate" are misspelled.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaudhary.

Chaudhary discloses a high dietary fiber product. The product is produced by drying brewer's spent grain. The high dietary fiber product comprises 70% fiber, 5.8%

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crude fat and about 20% protein. The product is used to prepared extruded food product such as raisin bran and is used in amount of 25%. The product is also used in baked products such as bread in amount of 15%. (see col. 1 lines 50-59, col. 2 lines 21-31 and col. 3 lines 3-10, and table 1)

Chaudhary does not disclose the source of grain from which the spent grain is made, the addition of water, the pH as claimed, the addition of sodium bicarbonate and products as cited in claims 8-9.

It would have been obvious to choose the spent grain from any known source and all the cereal grains claimed are well known in the art. As to the additional components, the product of Chaudhary is obtained from spent grain which is the same source of material as claimed; thus, it is obvious the components are the same. If the components are not the same, it would have been obvious to one skilled in the art to fractionate the spent grain to obtain fractions having any selected additional components such as minerals, amino acid and lysine depending on the nutritional status desired. This would have been within the determination of one in the art. The product of Chaudhary is added to baked product; thus, it would have been obvious to add water to the product to hydrate it thereby facilitating it addition to the baked product. The amount of water added depends on the product made and the amount of fiber product added; this can be determined by one skilled in the art through routine experimentation. Since the product is obtained from the same source as claimed, it is obvious the initial pH is the same as claimed because the specification does not disclose adding anything to alter the pH. It would have been obvious to increase the pH depending on the

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product made. For example, some baked product require leavening agent such as sodium bicarbonate which would increase the pH of the product. Chaudhary discloses using the fiber product in baked products; thus, it would have been obvious to add the fiber to any baked product including cookie, muffin , waffle and nutribar when wanting to make baked products having a high fiber content. Since the fiber product is from the same source as claimed, it is obvious it possesses the property of having reduced glycemic index.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Reddy et al disclose bakery product from distiller's grain.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 3, 2005

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700